

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2406 of 1997

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SPECIAL CIVIL APPLICATION No 2436 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Spl.C.A. No. 2406/97 :

JS PATEL/R F O

Versus

STATE OF GUJARAT

Spl.C.A. No. 2436/97 :

RM DESAI/R F O

Versus

STATE OF GUJARAT

Appearance:

Spl.C.A. No. 2406/97 :

MR MUKUL SINHA for Petitioner

MR DA BAMBHANIA, AGP for Respondents Nos. 1 & 2

MR YN OZA for Respondent No. 3

Spl.C.A. No. 2436/97 :

MR MR SHAH for Petitioner

MR DA BAMBHANIA, AGP for Respondents Nos. 1 & 2

MR YN OZA for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/04/97

COMMON ORAL JUDGEMENT

Rule returnable today. Learned AGP Mr DA Bambhania appears and waives service of Rule on behalf of the respondents Nos. 1 and 2. Learned advocate Mr YN Oza appears and waives service of Rule on behalf of the respondent No. 3 in both the petitions. With the consent of the learned advocates for the parties, these petitions are taken up for hearing today and are finally disposed of.

The petitioners in the above referred two petitions are Range Forest Officers who are aggrieved by order dated 20th March, 1997. Under the said order one Shri MP Patel, Range Forest Officer (Respondent No. 3 in Special Civil Application No. 2436 of 1997) has been posted at Urja Range, Gandhinagar while the petitioner Shri RM Desai has been posted at Wild Animals Branch, Gandhinagar. One Shri KV Thakore (Respondent No. 3 in Special Civil Application No. 2406 of 1997) has been posted at Antarsuba in Gandhinagar Range while the petitioner Shri JS Patel has been posted at GIR Foundation, Gandhinagar.

The aforesaid petitioner Shri JS Patel was earlier serving as a Range Forest Officer, Antarsuba from where, on 1st January, 1996, he was transferred as a Range Forest Officer, Palanpur. However, on account of his personal convenience, he made a request to transfer him back as a Range Forest Officer, Antarsuba. While his application for transfer to Antarsuba was pending before the competent authority for consideration, respondent No. 3 - Shri KV Thakore made an application to transfer him at Antarsuba. Considering his application, the Conservator of Forests, Gandhinagar Circle under his order dated 8th December, 1996 posted Shri Thakore at Antarsuba while one Shri KJ Maharaja who was then serving at Antarsuba was posted at Borij in the same circle. On 11th February, 1997, a general order of transfer was made by respondent No. 2 transferring several Range Forest Officers within the State of Gujarat. The request made by the petitioner Shri JS Patel was accepted and he was posted at Antarsuba. Respondent No. 3 - Shri KV Thakore was posted at Himmatnagar. Feeling aggrieved, Shri KV Thakore challenged the order of transfer before this Court by filing Special Civil Application No. 1466 of 1997. The notices were directed to be issued to the respondents to the said petition. The Court was informed that Shri Thakore's application was under consideration

and the petition was, therefore, withdrawn on 21st March, 1997. It appears that the impugned order was made on 20th March, 1997. However, the said fact was not disclosed to the Court. Feeling aggrieved by the above referred order dated 20th March, 1997, the petitioners have preferred these petitions.

It has been argued by the petitioners that the former order of transfer made in the month of February, 1997 was general order made by respondent No. 2 and both the petitioners were transferred at their own request and thus both of them had foregone their right to allowances otherwise admissible for such transfer. They have submitted that there was no justifications in interfering with the said order of transfer with a view to accommodating the respondents No. 3 in both the petitions. It is further submitted that the earlier order dated 11th February, 1997 which was challenged by Mr Thakore was contested by the respondents Nos. 1 and 2 and an affidavit was made justifying the said order. Though the present petitioners were the parties to the earlier petition, they have not been informed about the order made on 20th March, 1997 and without disclosing the fact the petition was withdrawn on 21st March, 1997. It is, therefore, alleged that the impugned order is vitiated being malafide and arbitrary.

Learned advocate Mr Oza appearing for both the respondents No. 3 has submitted that the respondent No. 3 - Shri Thakore was posted at Antarsuba Range at his own request on account of his personal convenience. He has referred to the order of transfer made on 8th December, 1996 and has contended that the said order was made in consultation with respondent No. 2. He has submitted that Shri Thakore having been transferred at his request in the month of December, 1996 was immediately transferred again in the month of February, 1997. The said respondent No. 3, therefore, had a right to represent to the Government which he has availed of. Considering his personal convenience, the respondents Nos. 1 and 2 accepted his representation and made the order dated 20th March, 1997 impugned herein. He has, therefore, submitted that there is no justification in disturbing the posting of respondent No. 3 at this stage when all the Officers have reported for their duty at their respective postings. Mr Oza as well as Mr Bambhania both have argued that under the impugned order the petitioners have been posted from one branch to the other branch. However, the headquarters remain at Gandhinagar. There being no change of headquarters, the order cannot be said to be that of transfer at all and,

therefore, no cause of action has arisen for these petitions. Mr Oza in support of this contention has relied upon the judgments of this Court delivered by the learned Single Judge in Special Civil Application No. 3675 of 1987 on 7th October, 1987 and Special Civil Application No. 3231 of 1991 on 10th June, 1991. In both the said matters, the Court considered the definition of word "Transfer" appearing in Rule 9(58) of the Bombay Civil Services Rules and has held that the case of change of posting within the same headquarters cannot be said to be a transfer. It is, therefore, submitted that these petitions require to be dismissed.

I have considered the arguments advanced by both the sides. It is true that the transfer not invoking the change of headquarters does not amount to transfer within the meaning of Rule 9 (58) of the Bombay Civil Services Rules. In the present case, neither of the petitioner are subjected to change of the headquarters. It, however, appears that an illwill has developed amongst all the four Officers who are serving as Range Forest Officers under the respondents Nos. 1 and 2 herein on account of these recent changes of posting. Presence of such disgruntled officers would not be conducive to the smooth and efficient administration of the department. It is, therefore, considered just and expedient that respondent No. 2 shall reconsider the request of the petitioners as well as the respondents No. 3 for particular posting and shall take appropriate decision. It is, therefore, directed that respondent No. 2 shall consider the requests made by both the petitioners and both the respondents No. 3 for transfer/posting at a place of their choice and shall decide the same within a period of three weeks from today. Such decision shall be taken in view of the requests which are already made by each of the aforesaid four Officers and the material which is available with respondent No. 2. Considering the allegations of malafide made by these officers against one another and against the respondent No. 2 and the Ministers concerned, it is directed that neither of these four Officers shall have a right to make further representation or to an audience before respondent No.2 in this regard. The decision that may be taken by respondent No. 2 pursuant to this order shall be final and binding to all the four Officers. Status quo obtaining as on today with regard to the posting of each of the four Officers shall continue to operate till respondent No. 2 makes further order. The petitions are allowed to the aforesaid extent. Rule is made absolute. The parties shall bear their own costs. Registry is directed to send the writ forthwith.
